

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

CARLOS ABREU,

Plaintiff,

-against-

9:16-CV-776 (LEK/ML)

KIMBERLY LIPKA, *et al.*,

Defendants.

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**ORDER**

Pro se plaintiff Carlos Abreu commenced this action on June 29, 2016 by filing a civil rights complaint under 42 U.S.C. § 1983. Dkt. No. 1 (“Complaint”). In a Decision and Order filed September 9, 2016, the Court granted Plaintiff’s motion to proceed in forma pauperis (“IFP”) and, after reviewing the Complaint pursuant to 28 U.S.C. §§ 1915(e) and 1915A, dismissed the Complaint for failing to state a claim upon which relief could be granted. Dkt. No. 5 (“September 2016 Decision & Order”). On October 7, 2016, Plaintiff moved for reconsideration of the September 2016 Decision & Order. Dkt. No. 6 (“Motion for Reconsideration”). On November 8, 2016, the Court denied the motion but granted Plaintiff a 60-day extension to file an amended complaint. Dkt. No. 7 (“November 2016 Decision & Order”). On January 24, 2017, the Court granted Plaintiff an extension until February 10, 2017 to file his amended complaint. Dkt. No. 9. When Plaintiff failed to file an amended complaint by that date, the Court dismissed this case in accordance with its previous orders. Dkt. No. 10 (“February 16, 2017 Judgment”). On March 22, 2017, Plaintiff then filed a motion to vacate the February 16, 2017 Judgment pursuant to Federal Rule of Civil Procedure 60(b), Dkt. No. 13 (“Motion to Vacate”), which the Court denied on May 19, 2017, Dkt. No. 15 (“May 2017

Decision & Order”). On July 5, 2017, Plaintiff appealed the May 2017 Decision & Order to the Second Circuit. Dkt. No. 16 (“Notice of Appeal”).

The Second Circuit reviewed the Court’s decision to dismiss Plaintiff’s Complaint and issued a Mandate: (1) affirming dismissal of Plaintiff’s First Amendment free exercise claims and Eighth Amendment claims for inadequate nutrition and conditions of confinement; and (2) vacating dismissal of Plaintiff’s Eighth Amendment claims for inadequate medical care against Karandy, Koenigsmann, Lipka, and Paolano and his First Amendment retaliation claims against Boscue, Ives, Lipka, Lyons, Pal, and Paolano. See Dkt. No. 22 (“Second Circuit Mandate”). The Second Circuit then remanded the case to this Court for further proceedings. Id.

On August 29, 2019, this matter was reassigned to the Honorable Miroslav Lovric, United States Magistrate Judge. Dkt. No. 23 (“August 2019 Text Order”). The Clerk mailed the August 2019 Text Order to Plaintiff at Buffalo Federal Detention Facility, but that mail was returned as “undeliverable.” Dkt. No. 24. Also, in an Order filed on October 4, 2019, the Court reopened this case and directed Plaintiff to provide the Court with copies of certain documents for service upon Defendants. Dkt. No. 25 (“October 2019 Order”). With no other address on file for Plaintiff, the Clerk again mailed the October 2019 to Plaintiff at Buffalo Federal Detention Facility, but this mailing was also returned as “undeliverable.” Dkt. No. 26. On December 11, 2019, the Court attempted to give Plaintiff a final opportunity to provide the documents required for service. Dkt. No. 27 (“December 2019 Text Order”). However, when the Clerk mailed the December 2019 Text Order to Plaintiff’s address at Buffalo Federal Detention Facility—the only address Plaintiff had provided to the Court—it was once again returned as “undeliverable.” Dkt. No. 28. At no time did Plaintiff provide the Court with an alternative address as required by Local Rule 10.1. See N.D.N.Y. L.R. 10.1(c)(2).

As of the date of this Order, Plaintiff still has not complied with the October 2019 Order or the December 2019 Text Order, provided the Court with an updated address as required by Local Rule 10.1, or communicated with the Court in any way since the Second Circuit issued its Mandate.

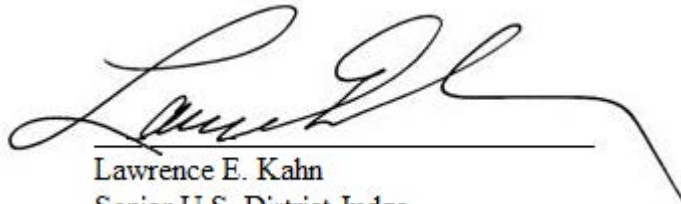
Accordingly, it is hereby

**ORDERED**, that this action is **DISMISSED** without prejudice and the Clerk is directed to enter judgment accordingly; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on Plaintiff in accordance with the local rules.

**IT IS SO ORDERED.**

DATED: March 12, 2020  
Albany, New York



Lawrence E. Kahn  
Senior U.S. District Judge